

ARKANSAS ETHICS COMMISSION

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ADVISORY OPINION NO. 2008-EC-004 Issued May 16, 2008

The Arkansas Ethics Commission is issuing this advisory opinion on its own initiative to address questions concerning the disclosure which members and members-elect of the General Assembly are required to make pursuant to Ark. Code Ann. § 21-8-901.

In addition to the disclosure required to be made in a statement of financial interest, the referenced statute requires a member or a member-elect of the General Assembly to report:

[A]ny goods or services sold during the previous calendar year having a total annual value in excess of one thousand dollars (\$1,000) *to an office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas by the member, his or her spouse,* or by any business in which such person or his or her spouse is an officer, director, or stockholder owning more than ten percent (10%) of the stock (emphasis added).

Recent filings by certain members of the General Assembly indicate a possible misunderstanding of what is and what is not required to be disclosed in accordance with Ark. Code Ann. § 21-8-901. This provision requires disclosure of *sales to* an office, department, commission, council, board, bureau, committee, legislative body, agency, or other establishment of the State of Arkansas. This provision does *not* require disclosure of income received via a third party payment (such as Medicaid) for sales to private citizens for health care services or prescription medications.


To determine whether or not disclosure of the sale of goods or services is required, one must determine to whom the sale of goods or services was actually made. If any "establishment of the State" is the purchaser of the goods or services, then disclosure would be required if the \$1,000 annual threshold is met. If, however, a private citizen or entity is the purchaser of the goods or services, the fact that the payment for services is subsidized through a state-supported program does not, in and of itself, require the provider of such goods or services to make disclosure.

For example, if a physician (or his or her spouse) provides services to a patient who is insured through the State Medicaid program, these medical services are provided to the patient and not to an establishment of the State. Accordingly, such services would not be required to be disclosed even if the payment received from Medicaid exceeded one thousand dollars (\$1,000). However, if that same physician (or his or her spouse) has a contract with the State Health Department to provide health care services to a particular group or type of patients, payment in excess of one thousand dollars (\$1,000) for such services would be required to be disclosed because the agreement to provide services is between the physician and an establishment of the State.

This advisory opinion is issued by the Commission pursuant to Ark. Code Ann. § 7-6-217(g)(2).

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By:


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